IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 231 of 2005

For Approval and Signature:

HON'BLE MR. JUSTICE M.D. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NIRAV HASMUKH VASAVA @ NIRAV ASHOKBHAI MEHTA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 231 of 2005

MR MP SHAH with Mr.K.M.Shahfor Petitioner.

MS. KRUTI M SHAH for Petitioner.

Mr.K.P.Raval, A.P.P. for Respondent-State.

CORAM : HON'BLE MR. JUSTICE M.D. SHAH

Date of decision: 13/05/2005

ORAL JUDGEMENT

Heard the learned Counsel Mr. M.P.Shah with Mr.

K.M.Shah for the petitioner and learned A.P.P. Mr.K.P.Raval for the respondent no.1-State.

1. Rule. Learned A.P.P. Mr. K.P.Raval waives service of rule on behalf of the respondent no.1-State. With the consent of the learned Advocates of both sides, the matter is taken up for final hearing and disposal today.

2. This Criminal Revision Application is directed against the order dated 17-12-2004 passed by the learned J.M.F.C., Bardoli in Criminal Misc. Application no.262/2004 arising from Bardoli Prohibition Station C.R. no.1502/2004 registered with Bardoli Police Station rejecting the prayer made by the applicant for custody of the Hero Honda Passion motorcycle bearing no.GJ-16 R-9504 in an application filed under Sec.451 of the Criminal Procedure Code.

3. It is the case of the applicant that on 2-10-2004 , the police of Prohibition Staff Force, Sector-I, Surat Vibhag had seized contraband English liquor valued at Rs.4320/-from motorcycle bearing no.GJ-16 R 9504 by stopping it on the opposite side of Palsana Cross Roads, N.H. No.8, Palsana District Surat from the applicant who is the owner of the said vehicle and the pillion rider-Rularubhai Dineshbhai Vasavda as the vehicle was found with number plate and was carryig liquor. Accordingly, a complaint came to be lodged being Bardoli Police Station C.R. No.1502/2004 for the offence under various sections of the Bombay Prohibition Act and the Muddamal liquor as well as the motorcycle in question was kept in custody of the police as per the Magistrate's order. The applicant accused thereupon moved an application under Section 451 of the Criminal Procedure Code before the learned J.M.F.C.Bardoli, being Criminal Misc. Application no.262/2004 for release of the Hero Honda Passion Motorcyle bearing no.GJ-16 R 9504 which came to be rejected after considering the relevant police report and hearing the parties, giving rise to the present Criminal Revision Application.

4. In order to decide the controversy involved in this Revision, it will be appropriate to refer here the two decisions rendered by the Apex Court (1) Sunderlal Ambalal Desai v. State of Gujarat reported in 2003(1) GLH 307 and (2) Rajendra Prasad v. State of Bihar and Anr. reported in (2001) 10 Supreme Court Cases 88 wherein in an identical situation, the Supreme Court has ordered interim custody of the seized vehicle to the petitioner.

5. Now, in the instant case, the applicant has specifically mentioned in his application that he is the owner of the motorcyle Hero Honda Passion bearing no.GJ 16 R 9504 giving engine no.23852, chasis no.23648 and model no.2004. The application has also paid taxes of the said motorcycle and produced one certificate issued by the Asstt. Regional Transport Office, Bharuch showing the said engine number and chasis number which clearly establishes that the vehicle is of the ownership of the petitioner. Moreover, there is no allegation that the vehicle in question has been used in the commission of any offence on any other occasion. There is no claim of ownership by any other party as well.

6. Viewed in the light of the facts situation as aforesaid and considering the evidence on record, I am of the opinion that the learned Magistrate has misappropriated the evidence on record in coming to the conclusion that the ownership of the vehicle in question is not established since prima facie, the ownership seems to be of the applicant. The Muddamal article being a motorcycle Hero Honda Passion, cannot be permitted to remain in the custody of the police exposed to heat and cold because the automobile is likely to suffer heavy damage in such situation. To avert this situation, I am inclined to entrust the interim custody of the said motorcycle to the applicant. In that view of the matter, this Criminal Revision Application deserves to be allowed subject to certain conditions.

7. In the result, this Criminal Revision Application is allowed. The judgment and order dated 17-12-2004 passed by the learned J.M.F.C., Bardoli in Criminal Misc.Application no.262/2004 is hereby quashed and set aside. It is directed that the Muddamal Motorcycle Hero Honda Passion bearing no. GJ 16 R-9504 be handed over to the applicant on condition that he shall furnish personal bond of Rs.40,000/-(Rupees forty thousand)_with one surety of the like amount to the satisfaction of the trial Court with a further condition that he shall produced the said vehicle before the trial Court as and when so directed. It is also directed that the said vehicle shall not be used for any illegal purpose and in the event it is found that the motorcycle in question is being used for any illegal purpose, the Investigating Agency will be at liberty to take over the custody of the said motorcycle and put the same in custody of the trial Court.

Rule is made absolute in the above terms. Direct

service is permitted.

(M.D.Shah,J.)

stanley-mds.